

## SENATE BILL No. 53

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-9.

**Synopsis:** Municipal sewer bills. Provides that for purposes of the statutes governing municipal sewage works, the municipal legislative body may adopt an ordinance to provide for one or more of the following with respect to property occupied by someone other than the owner of the property: (1) That sewer fees for the property are payable by the person occupying the property. (2) That sewer fees for the property are payable by the person occupying the property only if the property owner or the person occupying the property gives the municipal sewer utility written notice that indicates, or the utility's records for the property otherwise indicate, that the person occupying the property is responsible for paying the fees. (3) That sewer fees for the property do not constitute a lien against the property, subject to certain requirements or conditions that the municipal legislative body may set forth in the ordinance. Makes conforming amendments to provisions setting forth the manner in which municipal sewer liens attach and are enforced. Amends provisions requiring notice of fee delinquencies to the property owner to specify: (1) the address to which the notice must be sent; and (2) the municipal utility's obligation to provide the notice.

**Effective:** July 1, 2014.

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January 7, 2014, read first time and referred to Committee on Utilities.

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Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 53

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 36-9-23-25, AS AMENDED BY P.L.114-2008,  
2       SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2014]: Sec. 25. (a) Subject to section 37 of this chapter, the  
4       municipal legislative body shall, by ordinance, establish just and  
5       equitable fees for the services rendered by the sewage works, and  
6       provide the dates on which the fees are due.  
7       (b) Just and equitable fees are the fees required to maintain the  
8       sewage works in the sound physical and financial condition necessary  
9       to render adequate and efficient service. The fees must be sufficient to:  
10       (1) pay all expenses incidental to the operation of the works,  
11       including legal expenses, maintenance costs, operating charges,  
12       repairs, lease rentals, and interest charges on bonds or other  
13       obligations;  
14       (2) provide the sinking fund required by section 21 of this  
15       chapter;  
16       (3) provide adequate money to be used as working capital; and



(4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) **Except as otherwise provided in an ordinance described in subsection (f)**, the fees are payable by the owner of each lot, parcel of real property, or building that:

(1) is connected with the sewage works by or through any part of the municipal sewer system; or

(2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each sewer connection.

(2) The amount of water used on the property.

(3) The number and size of water outlets on the property.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property has been or will be required to pay separately for any part of the sewage works.

(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of ~~his~~ **the owner's** property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may



1 transfer fees collected in lieu of taxes under subdivision (9) to the  
2 general fund of the municipality.

3 (e) The municipal legislative body may exercise reasonable  
4 discretion in adopting different schedules of fees, or making  
5 classifications in schedules of fees, based on variations in:

- 6 (1) the costs, including capital expenditures, of furnishing  
7 services to various classes of users or to various locations; or  
8 (2) the number of users in various locations.

9 **(f) The municipal legislative body may adopt an ordinance**  
10 **under this chapter to provide for one (1) or more of the following**  
11 **with respect to property occupied by someone other than the**  
12 **owner of the property:**

13 **(1) That fees for the services rendered by the sewage works to**  
14 **the property are payable by the person occupying the**  
15 **property. At the option of the municipal legislative body, the**  
16 **ordinance may include any:**

17 **(A) requirement for a deposit to ensure payment of the fees**  
18 **by the person occupying the property; or**

19 **(B) other requirement to ensure the creditworthiness of the**  
20 **person occupying the property as the account holder or**  
21 **customer with respect to the property;**

22 **that the municipal legislative body may lawfully impose.**

23 **(2) That the fees for the services rendered by the sewage**  
24 **works to the property are payable by the person occupying**  
25 **the property only if one (1) of the following conditions is**  
26 **satisfied:**

27 **(A) Either the property owner or the person occupying the**  
28 **property gives to the general office of the utility written**  
29 **notice that indicates that the person occupying the**  
30 **property is responsible for paying the fees with respect to**  
31 **the property and requests that the account or other**  
32 **customer or billing records maintained for the property be**  
33 **in the name of the person occupying the property. At the**  
34 **option of the municipal legislative body, the ordinance may**  
35 **provide that a copy of a rental agreement, a lease, or a**  
36 **contract that:**

37 **(i) is executed by the property owner and the person**  
38 **occupying the property;**

39 **(ii) identifies the person occupying the property by**  
40 **name; and**

41 **(iii) indicates that the person occupying the property is**  
42 **responsible for paying the fees assessed by the utility**



1           with respect to the property;  
 2           serves as written notice for purposes of this clause.  
 3           **(B) The account or other customer or billing records**  
 4           **maintained by the utility for the property otherwise**  
 5           **indicate that:**  
 6                (i) the property is occupied by someone other than the  
 7                owner; and  
 8                (ii) the person occupying the property is responsible for  
 9                paying the fees.  
 10           **(3) That fees assessed against the property for the services**  
 11           **rendered by the sewage works to the property do not**  
 12           **constitute a lien against the property, notwithstanding section**  
 13           **32 of this chapter, and subject to any requirements or**  
 14           **conditions set forth in the ordinance under subdivision (1) or**  
 15           **(2).**

16           SECTION 2. IC 36-9-23-32, AS AMENDED BY P.L.113-2010,  
 17           SECTION 153, IS AMENDED TO READ AS FOLLOWS  
 18           [EFFECTIVE JULY 1, 2014]: Sec. 32. (a) **Except as otherwise**  
 19           **provided in an ordinance described in section 25(f) of this chapter,**  
 20           fees assessed against real property under this chapter or under any  
 21           statute repealed by IC 19-2-5-30 (**repealed September 1, 1981**)  
 22           constitute a lien against the property assessed. The lien is superior to  
 23           all other liens except tax liens. Except as provided in subsections (b)  
 24           and (c), the lien attaches when notice of the lien is filed in the county  
 25           recorder's office under section 33 of this chapter.

26           (b) A fee is not enforceable as a lien against a subsequent owner of  
 27           property unless the lien for the fee was recorded with the county  
 28           recorder before the conveyance to the subsequent owner. If the property  
 29           is conveyed before the lien can be filed, the municipality shall notify  
 30           the person who owned the property at the time the fee became payable.  
 31           The notice must inform the person that payment, including penalty fees  
 32           for delinquencies, is due not more than fifteen (15) days after the date  
 33           of the notice. If payment is not received within one hundred eighty  
 34           (180) days after the date of the notice, the amount due may be  
 35           expensed as a bad debt loss.

36           (c) **Except as otherwise provided in an ordinance described in**  
 37           **section 25(f) of this chapter,** a lien attaches against real property  
 38           occupied by someone other than the owner only if the utility ~~notified~~  
 39           **notifies** the owner ~~within not later than~~ twenty (20) days after the time  
 40           the utility fees ~~became~~ **become** sixty (60) days delinquent. However,  
 41           the utility is required to give notice **of the delinquency** to the owner  
 42           **only** if the owner has given the general office of the utility written



notice of the address to which the owner's notice is to be sent. A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to ~~(1) the owner of record of real property with a single owner; or (2) at least one (1) of the owners of real property with multiple owners;~~

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. ~~the address specified by the owner in the owner's written notice to the utility.~~

The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 3. IC 36-9-23-33, AS AMENDED BY P.L.39-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 33. **(a) Subsections (c) through (l) do not apply to unpaid fees and penalties assessed against property occupied by someone other than the property owner if:**

**(1) the municipal legislative body has adopted an ordinance described in section 25(f) of this chapter concerning property occupied by someone other than the property owner;**

**(2) the ordinance described in section 25(f) of this chapter provides that fees assessed against the property for services rendered by the sewage works to the property do not constitute a lien against the property, as authorized under section 25(f)(3) of this chapter; and**

**(3) any requirements or conditions:**

**(A) described in section 25(f)(1) or 25(f)(2) of this chapter; and**

**(B) included in the ordinance;**

**have been satisfied.**

~~(a)~~ **(b)** An officer described in subsection ~~(b)~~ **(c)** may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days. **However, in the case of property that is occupied by someone other than the owner and for which**



1 the owner has given the utility written notice of an address to  
 2 which to send notice of delinquent fees with respect to the  
 3 property, this subsection does not relieve the utility of its duty  
 4 under section 32(c) of this chapter to notify the owner not later  
 5 than twenty (20) days after the time user fees become sixty (60)  
 6 days delinquent.

7 ~~(b)~~ (c) Except as provided in subsection ~~(f)~~, (m), the officer charged  
 8 with the collection of fees and penalties assessed under this chapter  
 9 shall enforce their payment. As often as the officer determines is  
 10 necessary in a calendar year, the officer shall prepare either of the  
 11 following:

12 (1) A list of the delinquent fees and penalties that are enforceable  
 13 under this section, which must include the following:

14 (A) The name or names of the owner or owners of each lot or  
 15 parcel of real property on which fees are delinquent.

16 (B) A description of the premises, as shown by the records of  
 17 the county auditor.

18 (C) The amount of the delinquent fees, together with the  
 19 penalty.

20 (2) An individual instrument for each lot or parcel of real property  
 21 on which the fees are delinquent.

22 ~~(e)~~ (d) The officer shall record a copy of each list or each individual  
 23 instrument with the county recorder who shall charge a fee for  
 24 recording the list or each individual instrument in accordance with the  
 25 fee schedule established in IC 36-2-7-10. The officer shall then mail to  
 26 each property owner on the list or on an individual instrument a notice  
 27 stating that a lien against the owner's property has been recorded.  
 28 Except for a county having a consolidated city, a service charge of five  
 29 dollars (\$5), which is in addition to the recording fee charged under  
 30 this subsection and under subsection ~~(f)~~, (g), shall be added to each  
 31 delinquent fee that is recorded.

32 ~~(d)~~ (e) This subsection applies only to a county containing a  
 33 consolidated city. Using the lists and instruments prepared under  
 34 subsection ~~(b)~~ (c) and recorded under subsection ~~(e)~~, (d), the officer  
 35 shall certify to the county auditor, **according to a schedule agreed**  
 36 **upon by the county treasurer and the officer**, a list of the **unpaid**  
 37 **liens that remain unpaid according to a schedule agreed upon by the**  
 38 **county treasurer and the officer** for collection with the next cycle's  
 39 property tax installment. The county and its officers and employees are  
 40 not liable for any material error in the information on the list.

41 ~~(e)~~ (f) **This subsection applies to a county not described in**  
 42 **subsection (e).** Using the lists and instruments prepared under



1 subsection ~~(b)~~ (c) and recorded under subsection ~~(e)~~; (d), the officer  
 2 shall, not later than ten (10) days after the list or each individual  
 3 instrument is recorded under subsection ~~(e)~~; (d), certify to the county  
 4 auditor a list of the **unpaid** liens ~~that remain unpaid~~ for collection ~~in~~  
 5 **with the next May installment of property taxes.** The county and its  
 6 officers and employees are not liable for any material error in the  
 7 information on this list.

8 ~~(f)~~ (g) The officer shall release any recorded lien when the  
 9 delinquent fees, penalties, service charges, and recording fees have  
 10 been fully paid. The county recorder shall charge a fee for releasing the  
 11 lien in accordance with IC 36-2-7-10.

12 ~~(g)~~ (h) On receipt of the list under subsection (e) **or (f)**, the county  
 13 auditor of each county shall add a fifteen dollar (\$15) certification fee  
 14 for each lot or parcel of real property on which fees are delinquent,  
 15 which fee is in addition to all other fees and charges. The county  
 16 auditor shall immediately enter on the tax duplicate for the  
 17 municipality the delinquent fees, penalties, service charges, recording  
 18 fees, and certification fees, which are due not later than the due date of  
 19 the next **cycle's** installment of property taxes. The county treasurer  
 20 shall then include any unpaid charges for the delinquent fee, penalty,  
 21 service charge, recording fee, and certification fee to the owner or  
 22 owners of each lot or parcel of property, at the time the next cycle's  
 23 property tax installment is billed.

24 ~~(h)~~ (i) After certification of liens under subsection ~~(e)~~ (f), the officer  
 25 may not collect or accept delinquent fees, penalties, service charges,  
 26 recording fees, or certification fees from property owners whose  
 27 property has been certified to the county auditor. This subsection does  
 28 not apply to a county containing a consolidated city.

29 ~~(i)~~ (j) If a delinquent fee, penalty, service charge, recording fee, and  
 30 certification fee are not paid, they shall be collected by the county  
 31 treasurer in the same way that delinquent property taxes are collected.

32 ~~(j)~~ (k) At the time of each semiannual tax settlement, the county  
 33 treasurer shall certify to the county auditor all fees, charges, and  
 34 penalties that have been collected. The county auditor shall deduct the  
 35 service charges and certification fees collected by the county treasurer  
 36 and pay over to the officer the remaining fees and penalties due the  
 37 municipality. The county treasurer shall retain the service charges and  
 38 certification fees that have been collected, and shall deposit them in the  
 39 county general fund.

40 ~~(k)~~ (l) Fees, penalties, and service charges that were not recorded  
 41 before a recorded conveyance shall be removed from the tax roll for a  
 42 purchaser who, in the manner prescribed by section 32(d) of this





chapter, files a verified demand with the county auditor.

~~(a)~~ **(m)** A board may write off a fee or penalty under subsection ~~(a)~~ **(b)** that is for less than forty dollars (\$40).

SECTION 4. IC 36-9-25-11, AS AMENDED BY P.L.168-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and, **except as otherwise provided in an ordinance described in subsection (l)**, the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.



(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, **the board may recover, in a civil action in the name of the municipality,** the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee ~~may be recovered by the board~~ from:

(1) the delinquent user; or

(2) **the owner of the property;**

~~served in a civil action in the name of the municipality.~~ **subject to any ordinance described in subsection (l).**

(g) **Except as otherwise provided in subsection (h) or in an ordinance described in subsection (l),** fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the:

(1) penalties under subsections (f) and (g); ~~and or~~

(2) **alternative penalty available under** section 11.5 of this chapter;

a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance



under section 42 of this chapter. A fee that is:

- (1) established under this subsection or any other law; and
- (2) used to provide financial assistance under section 42 of this chapter;

is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

**(l) For purposes of this subsection, "municipal legislative body" refers to the legislative body of each municipality in the district, in the case of a district described in section 3(b)(2) of this chapter. The municipal legislative body may adopt an ordinance under this chapter to provide for one (1) or more of the following with respect to property occupied by someone other than the owner of the property:**

**(1) That fees for the services rendered by the sewerage system to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:**

**(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or**

**(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;**

**that the municipal legislative body may lawfully impose.**

**(2) That the fees for the services rendered by the sewerage system to the property are payable by the person occupying the property only if one (1) of the following conditions is satisfied:**

**(A) Either the property owner or the person occupying the property gives to the board written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a copy of a rental agreement, a lease, or a contract that:**

**(i) is executed by the property owner and the person occupying the property;**

**(ii) identifies the person occupying the property by name; and**

**(iii) indicates that the person occupying the property is**



1           **responsible for paying the fees assessed by the board**  
2           **with respect to the property;**  
3           **serves as written notice for purposes of this clause.**  
4           **(B) The account or other customer or billing records**  
5           **maintained by the board for the property otherwise**  
6           **indicate that:**  
7               **(i) the property is occupied by someone other than the**  
8               **owner; and**  
9               **(ii) the person occupying the property is responsible for**  
10           **paying the fees.**  
11           **(3) That fees assessed against the property for the services**  
12           **rendered by the sewerage system to the property do not**  
13           **constitute a lien against the property, notwithstanding**  
14           **subsection (g), and subject to any requirements or conditions**  
15           **set forth in the ordinance under subdivision (1) or (2).**

